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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN;
ELFEGO RODRIGUEZ; AND JAMAL
CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; AND DOES 1 THROUGH
100, INCLUSIVE.

Defendants.

CASE NO.: BC 414 602

Assigned to: Hon. Joanne B. O'Donnell, Judge
Dept. 37

Complaint Filed: May 28, 2009

PLAINTIFF'S REPLY TO DEFENDANT'S
OPPOSITION TO PLAINTIFF'S MOTION *IN*
LIMINE NO. 5 TO EXCLUDE DOCUMENTS,
TESTIMONY AND OTHER EVIDENCE
REQUESTED BUT NOT DISCLOSED
DURING DISCOVERY
Final Status Conference:

DATE: June 8, 2011

TIME: 9:00 a.m.

DEPT: 37

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK,

Cross-Complainants,

Trial Date: June 8, 2011

-vs-

OMAR RODRIGUEZ, and Individual,

Cross- Defendant.

6/11

1 **I. PLAINTIFF HAS MET AND CONFERRED IN COMPLIANCE WITH LOCAL RULES**

2 As stated in the Declaration of Steven M. Cischke accompanying Plaintiff's Motion *in*
3 *Limine* No. 5, on March 31, 2011, Mr. Cischke emailed a letter to Lawrence A. Michaels, counsel for
4 Defendant, in an attempt to meet and confer regarding Plaintiff's motions *in limine*. Nowhere in the
5 letter does it indicate that the motions discussed therein would only be filed in the Cindy Gomez
6 trial. The subject line references "*Rodriguez v. Burbank Police Department, et al.*" and not any of
7 the individual related cases. Plaintiff has not filed any motions in the Steve Karagiosian trial that
8 were not discussed in the March 31 letter. All of the motions *in limine* Plaintiff has filed with
9 respect to Plaintiff Steve Karagiosian's trial were discussed in the March 31, 2011. Those motions
10 were argued during a pre-trial conference for the Guillen-Gomez trial. Defendant argues in its
11 opposition to Plaintiff's Motion *in Limine* No. 5 that the court denied the motion with respect to the
12 Guillen-Gomez trial. Thus, it is clear that "the subject of the motion has been discussed with
13 opposing counsel," in compliance with local rules, and Defendant's argument that counsel has not
14 met and conferred with respect to the motion, and is guilty of fraud, is unfounded.

15 **II. A PARTY MAY NOT WITHHOLD A DOCUMENT FROM DISCOVERY,**
16 **THEN PRODUCE IT AT TRIAL, EVEN FOR IMPEACHMENT PURPOSES**

17 In its Motion *in Limine* No. 5, Plaintiff seeks to exclude the Moisa report and the Bent report,
18 and any other report requested but not produced during discovery, on the settled principle that a party
19 may not withhold evidence during discovery, for whatever reason, and then spring the evidence on
20 the other party at trial. (*Deeter v. Angus* (1986) 179 Cal.App.3d 251, 254-255; *A&M Records v.*
21 *Heilman* (1977) 75 Cal.App.3d 554, 566.) There is no real dispute that the reports have not been
22 produced with respect to Plaintiff Steve Karagiosian. Although in its opposition, Defendant claims,
23 "Karagiosian asserts that Burbank failed to produce certain documents during discovery. This is
24 patently untrue," Defendant then goes on to explain why it **has not** produced the documents.

25 In its opposition, Defendant completely ignores Plaintiff's argument, and instead argues that
26 the motion should be denied because the evidence might be relevant. Defendant misses the point.
27 Plaintiff has not argued that the reports should be excluded because they are not relevant. Plaintiff
28 argued that the reports should be excluded, whether or not they are relevant, because it would be

1 patently unfair to allow a party to withhold a document from discovery, then spring the document on
2 the other party at trial. Defendant's silence with respect to Plaintiff's actual argument is a tacit
3 admission of the validity of that argument. Thus, Plaintiff's motion should be granted.

4 With respect to the Moisa report, Judge Wayne's review is currently ongoing. However, if
5 Judge Wayne does not order that the Moisa report be produced to Plaintiff, then Defendant should be
6 precluded from offering it into evidence at trial based on the cases cited above. Thus, Plaintiff's
7 motion should be granted with respect to the Moisa report.

8 With respect to the Bent report, Defendant argues that Plaintiff did not ask for it because he
9 failed to provide a list of desired documents as required by the 8th Report of the Discovery Referee
10 ("8th Report"). However, the 8th Report applies only to Plaintiff Cindy Guillen-Gomez. (8th Report,
11 p. 2, ll. 22-25; p.3, ll. 1-3.) Thus, Defendant's argument lacks foundation. Consequently, Plaintiff's
12 motion should be granted with respect to the Bent report.

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15 DATED: June 1, 2011

LAW OFFICES OF RHEUBAN & GRESEN

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17 By: Steven M. Cischke
Steven M. Cischke
18 Attorneys for Plaintiff, Steve Karagiosian
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